IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 123 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

COMMISSIONER OF INCOME TAX

Versus

VISHWAJIT M MEHTA

Appearance:

MR BB NAIK for MR MANISH R BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following

question has been referred to this court for its opinion under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by the Income Tax Appellate Tribunal, Ahmedabad Bench 'A'.

> "Whether, on the facts and in the circumstances and in law the Tribunal was right in coming to the conclusion that the interest u/s 215 of the Income-tax Act could not be levied as a result of an order passed u/s 154 of 155 of the I.T. Act?"

2. Learned advocate Shri B.B. Naik has appeared for the applicant whereas, though served, nobody has appeared for the respondent-assessee.

3. The short question which this court has to decide is whether for the Assessment Year 1979-80 the assessee could have been made liable to pay additional interest under the provisions of sec. 215(3) as a result of the order passed under sec. 155 read with sec. 154. In the process of assessment for the A.Y. 1979-80, the Assessing Officer passed an order under the provisions of sec. 155 read with sec. 154 of the Act whereby income of the assessee had been increased and therefore interest under sec. 215(3) had been levied. Being aggrieved by the order, the assessee filed an appeal before the CIT (Appeals). The CIT (Appeals) had quashed the order on the ground that the assessee was not heard before the order was passed by the Assessing Officer.

4. Being aggrieved by the order passed by the CIT (Appeals), the revenue filed an appeal before the Tribunal. The Tribunal ultimately upheld the order of the CIT (Appeals) on an additional ground to the effect that at the relevant time sec. 215(3) did not permit increase in the interest. It is pertinent to note that sec. 215(3) at the relevant time stood as under :

> "(3) Where as a result of an order under section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 264, the amount on which interest was payable under this section has been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded."

5. Sub-sec. (3) of sec. 215 of the Act has been subsequently amended, but at the relevant time there was no provision with regard to levying additional interest.

6. The Tribunal considered this fact and in view of the legal position, which prevailed at the relevant time, it came to the conclusion that the Assessing Officer was not empowered to levy or increase the amount of interest under sec. 215(3) of the Act.

7. Looking to the provisions of sec. 215(3) of the Act, it is very clear that for the Assessment Year 1979-80, the Assessing Officer had no power to levy further interest under sec. 215(3) of the Act and, therefore, in our opinion, interest under sec. 215(3) of the Act could not have been levied as a result of the order passed under sec. 154 or sec. 155 of the Act for the relevant assessment year.

8. In the circumstances, we answer the question referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

The reference thus stands disposed of with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

(hn)